IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5971 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATUBHAI BABARBHAI GOHIL - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1.0 The petitioner has challenged the award dated 11.12.1996 passed by the Labour Court, Vadodara Reference

LCV No. 333 of 1993, whereby the respondent was directed to reinstate the petitioner with continuity of service but without any back wages.

2.0 The petitioner herein is working as a Driver with the respondent Corporation. It is the case of the petitioner that on account of illness he had remained absent from duty during the period from 06.06.1992 to 15.06.1992 and 21.06.1992 to 26.06.1992, after submitting the sick report and necessary medical certificate. However, allegation was leveled against the petitioner that he had unauthorizedly remained absent from duty.

2.1 On the basis of the said allegation, departmental inquiry was initiated, and ultimately, the petitioner was dismissed from service on 18.12.1992. The said order of dismissal was challenged before the Labour Court, Vadodara in Reference No.333 of 1993 which came to be disposed of with the aforesaid directions. By way of this petition, the petitioner has challenged that part of award by which he was denied back wages. Hence, this petition.

3.0 I have heard learned counsel for the parties and

perused the documents placed on record. In the impugned award, the Labour Court has recorded a finding that the petitioner has admitted the legality and validity of the departmental inquiry held against him. Moreover, the petitioner has himself stated that he was gainfully employed during the interim period. In my opinion, the Labour Court was completely justified in denying back wages to the petitioner.

3.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua denying the petitioner back wages is required to be confirmed.

4.0 In the result, the petition is dismissed. The impugned award of the Labour Court, Vadodara, is confirmed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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